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HIGH COURT OF JUDICATURE CHHATTISGARH:BILASPUR

Single Bench : Hon'ble Shri S.R. Nayak, CJ

Writ Petition No.6445 OF 2005

Petitioners

1. M/s Paradise, a regd. Parthership firm through partner Kanhaiya Lal Nainani aged 72. years S/o late Jagat Mal Nainani, R/o Civil Lines, Raipur, Town, Tahsil and District Raipur (C.G.)
2. Kanhaiyalal, aged 72 years. S/o late jagat mal Nainani, at M/s Paradise, Kiran Building, Jai Stambh Chowk, Raipur, C.G.
3. Ghanshyamdas, aged 48 yrs. S/o Kanhaiyalal Nainani, at Paradise, Kiran Building, Jai Stambh Chowk, Raipur, C.G.

Versus

Respondents

1. State of Chhattisgarh through secretary to the department of local self government and urban development, D.K.S. Bhawan, Secretariate, Raipur, C.G.
2. Municipal corporation, Raipur through it's commissioner.
3. Sardar Mohinder Singh Sando son of late Kripal Singh at Kiran Building, Jai Stambh Chowk, Raipur Town, Tahsil and District, Raipur (C.G.)
4. Sardar Sukhdev Singh Sando son of late Kripal Singh Sando, at Kiran Building Jai Stambh Chowk, Raipur Town, Tahsil and District, Raipur (C.G.)
5. Smt. Kuldeep Kaur widow of late Gurusharan Singh at Kiran Building, Jai Stambh Chowk, Raipur Town, Tahsil and District, Raipur C.G.)
6. Sardar Sirat Singh son of Hardeep Singh at Kiran Building, Jai Stambh Chowk, Raipur Town, Tahsil and District, Raipur (C.G.)
7. Sardar Baljeet Singh son of Hardeep Singh at Kiran Building, Jai Stambh Chowk, Raipur Town, Tahsil and District, Raipur (C.G.)

Present: Shri Bhishma Kinger, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. for the State/respondent No.1
Shri H.B. Agrawal, learned Sr. Advocate with Shri Pankaj Agrawal, learned counsel for respondent No.2.

ORAL ORDER
(Passed on 22nd of December 2005)

The petitioners claimed to be tenants of the shops situate at the ground floor of building known as Kiran Building at Jai Stambh Square, G.E. Road, Raipur, under respondents 3 to 7. It is alleged that the State Government, the first respondent herein in order to beautify the capital city of Raipur had taken steps to evict the petitioners from the shops. It is averred that there is an understanding between respondents 1 and 2 on the one hand and respondents 3 to 7 on the other hand to pull down the building where the petitioners' shops are situated and the Government would allot alternative land of equal area by respondents 1&2 in favour of respondents 3 to 7 on the adjacent land presently called the Supdt. of Railway Police Office premises to raise a new building. It is complained that though the petitioners are in actual possession of the shops, they were not called for discussion, nor they were made parties to the understanding arrived at between the respondents 1 and 2 on the one hand and respondents 3 to 7 on the other hand. The petitioners have further averred that they are earning livelihood from the business they carryon in the subject shops and if they are evicted from the shops that would affect their source of livelihood. With the above pleadings, the petitioners have sought for the following main reliefs :

> " In view of the facts mentioned above, the petitioner most respectfully and humbly prays that the Hon'ble Court may kindly be pleased to issue a writ of certiorari, mandamus, direction or any other appropriate writ for the following reliefs :
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> i). To call for the records from the respondents relating to the subject matter for inspection of the relevant papers and adjudication of the dispute.
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> ii). To direct the respondents to first construct a new proposed building without prejudice to the interests and

rights of the petitioners in respect of their tenancy of four portions.

iii). To direct the respondents to deliver vacant possession of and induct the petitioners into the four portions of the new building absolutely corresponding to the same area, size, location of their original existing shops/portions on the same terms and conditions as obtain today between the petitioners and the respondents No.3 to 7 unless, of course, both the parties amicable settle different or new terms in writing by mutual consent and further direct that apart from footpath there would be no other construction or obstruction in front of the said shops/portions so that the demised portions are easily accessible form the G.E. Road.

iv) To award costs of the petition.

v) To issue any other appropriate writ, order or direction in favour of the petitioners and against the respondents as deemed just and proper on the facts and in the circumstances of the case.

A careful perusal of the reliefs sought in this writ petition would go to show that petitioners are seeking injunction pure and simple to protect their alleged rights over the subject shops in the capacity of the tenants under respondents 3 to 10. I am of the considered opinion that the dispute brought before this court is essentially civil in nature and grievance of the petitioners is eminently a fit subject for a suit before the jurisdictional Court. In that view of the matter, there is no need for me to express any opinion on merit of the matter. It is quite often said and reiterated by the Courts that in the cases of landed properties, declaration and injunction by way of private law review would be more efficacious and comprehensive than the mandamus that may be granted by this Court under Article 226 of the Constitution of India. The writ Court cannot be converted into a Civil Court to entertain the kind of grievance which is brought before this Court

in this present case. Further, it was contended by learned counsel for the petitioners that the remedy available before the Civil Court in the context of the case is not efficacious and it is a time consuming one. I do not think so. After 1976 amendment to C.P.C., the Civil Courts are conferred with extraordinary power to pass appropriate interim orders in the case of urgencies, even before the expiry of statutory notice contemplated under Section 80 of CPC. Be that as it may, I do not find any legal basis for the main relief sought in this writ petition that the respondents shall be directed not to evict the petitioners from the subject shops unless and until all of them are provided with alternative accommodation elsewhere. Such right cannot be traced from any of the provisions of T.P. Act or any other law. In the result, I dismiss this writ petition, however, reserving liberty to the petitioners to work out their legal remedies before the jurisdictional civil Court. In the event of the petitioners instituting suit before the jurisdictional civil Court, such Court shall try and dispose of the suit on its own merit without being in any way influenced by any of the observations made by me in this order. There shall be no order as to cost.

Sd/-
Chief Justice